

PREMA
v.
ARIYANANDA

COURT OF APPEAL
JAYASINGHE, J.
JAYAWICKREMA, J.
CA. 953/97 (Rev)
D. C. COLOMBO 8012/RE
27TH APRIL, 1999.
03RD FEBRUARY, 2000.

Landlord and Tenant - Rent Act No. 7 of 1972 - Act, No. 55 of 1990, S.22(1) 2(A), S.22(2) (b), S.22(1) (bb), S.22(7), S.48, - Single House owner - Landlord - Married Women's Property Ordinance - Matrimonial Rights and Inheritance Ordinance S5(1) (2) (3) (9), S. 18 - Community of property - Roman Dutch Law - Writ pending appeal - Civil Procedure Code S. 763 - Can a stay order be granted.?

The Plaintiff Respondent instituted action in terms of S.22(2) (bb) of the Rent Act as amended. The District Court held in favour of the Plaintiff. The Defendant - Petitioner appealed against the said Judgment - The Plaintiff Respondent sought writ pending appeal which the District Court granted.

Moving in Revision the Defendant Petitioner contended that, the Court did not have jurisdiction as under S.22(2) (1) (bb) an action can be instituted only on the ground that the landlord is the owner of one house. It was contended that the Plaintiff and her husband have two houses, and the action therefore was not properly and legally instituted.

Held :

(1) In view of Section 22(1) (2A) read with Section (2B) of the Rent Act the District Court had no discretion to stay the execution of Writ as Court had entered decree for ejection under the above provisions - thus the Defendant is not entitled to a stay order.

(2) Provisions of S.22(2) (bb) is the law applicable to a landlord who is a owner of one house. The wording in Section 22(1) (bb) and the wording in Section 22(2) (bb) are different.

(3) When one considers the provisions in the Married Womens Property Ordinance - Section 5(1) (2) (3) (7), Section 10, Section 18 and the provisions in the Matrimonial Rights and Inheritance Ordinance, it is clear that the concept of Roman Dutch Law of community of property is not in force in Sri Lanka. In such a situation one cannot say that a wife

who is a single house owner cannot maintain an action for ejectment of a tenant merely because her husband is also an owner of another house.

APPLICATION in Revision from an order of the District Court of Colombo.

Cases referred to :

1. *S. A. S. Sellamulla Mowlana vs. P. Arunasalama* - 1988 - 2 CALR 159.
2. *Jiffrey vs. Esufali* - [1998] 2 Sri L. R. 41.

Ms. Padmarajil for Defendant Petitioner.

Ranjan Suwandaradne for Plaintiff Respondent.

Cur. adv. vult.

March 28, 2000.

JAYAWICKRAMA, J.

This is an application for revision and restitution in intergrum to set aside the judgment dated 16.08.1995 delivered on 01.09.1995 and the order dated 02.12.1997 of the learned Additional District Judge of Colombo, wherein he has entered judgment in favour of the Plaintiff and allowed the writ of execution as prayed for by Plaintiff. The Plaintiff-Respondent instituted action in the District Court of Colombo against the Defendant-Petitioner in terms of Section 22(2) (b) of the Rent Act No. 7 of 1972 as amended by Act No. 55 of 1980. The learned Additional District Judge held in favour of the Plaintiff. The Defendant-Petitioner filed an appeal No. 606/95 against the judgment which is pending in this Court. The Plaintiff-Respondent filed an application for writ pending appeal dated 18.09.1996 under Section 763 of the Civil Procedure Code. The Defendant-Petitioner filed his objections against this application and the learned Additional District Judge allowed the application for writ pending appeal on 02.12.1997.

The learned Counsel for the Defendant-Petitioner submitted that the learned District Judge did not have jurisdiction, as under Section 22(2) (1) (bb) an action can

be instituted only on the ground that the landlord is the owner of one house. She contended that the evidence of the Plaintiff-Respondent revealed that the Plaintiff and her husband have two houses. The Plaintiff in giving evidence admitted that her husband is the owner of the house at Galle where they are living. Learned Counsel further submitted that an order for writ can only be made if the action is properly and legally instituted.

According to Section 22(1) (2A) "where a decree for the ejection of the Defendant of any premises referred to in paragraphs (bb) of Section (2) is entered by any Court or on any of the grounds referred to in the paragraphs, the Court shall forthwith issue a writ in execution of the decree to the Fiscal of the Court requiring and authorizing him to deliver vacant possession of the premises to the landlord of such premises."

According to sub-section (2B) "notwithstanding anything in any other law, where a writ in execution of the decree for the ejection of the tenant of any premises referred to in paragraph (bb) of sub-section (2) is issued by any Court, the execution of such writ shall not be stayed in any manner by reason of any appeal from the judgment of such Court.

In view of the above provisions the learned District Judge had no discretion to stay the execution of writ as he has entered decree for ejection under the above provisions. In view of the above imperative provisions the Defendant-Petitioner is not entitled to apply for a stay order.

The learned Counsel for the Defendant-Petitioner submitted that as the Plaintiff-Respondent is the owner of the house No. 21, Lumbini Road, Dalugama which is the subject matter of this action and that her husband is the owner of another house in Galle, the concept of one house owner cannot be maintained in this case. Therefore she contended that the judgment of the learned Additional District judge is manifestly wrong, and in such a situation the

Plaintiff-Respondent is not entitled to a writ of possession. The learned Counsel contended that the words one house owner was legally interpreted by the Court of Appeal in *S. A. S. Sellamullah Mowlana vs. P. Arunasalam*⁽¹⁾. It was held in that case, that the word "landlord" in Section 22(1) (bb) and Section 22(7) means landlord and (or his spouse) and that as the Plaintiff's wife did not own more than one residential premises he was entitled to maintain the action. In that case the issue to be decided was whether a husband who was not the owner of a house could maintain an action on behalf of his wife who was the owner of one house. In the instant case the facts are different.

According to the interpretation Section 48 the word "landlord" in relation to any premises means the person for the time being entitled to receive the rent of such premises and includes any tenant who lets the premises or any part thereof to any sub tenant. According to the above interpretation of the word landlord in the Rent Act, even a tenant could be a landlord for the purpose of the Act. In such a situation one cannot say that the word landlord means a family unit, for the simple reason that the tenant may not be a member of the family. In any event in *Mowlana vs. Arunasalam (supra)* the court interpreted the word "landlord" in Section 22(1A) and in Section 22(7) and expressed the view that the word "landlord" should be given an extended meaning to include a spouse. In the above case the Plaintiff was not the owner of the premises in suit and it was owned by his wife and therefore the Plaintiff was acting on behalf of his wife who was the actual owner of the premises. On that basis the Court held that the word "landlord" in Section 22(1) (bb) and Section 22(7) means landlord and/or his spouse and that as the Plaintiff's wife did not own more than one residential premises he was entitled to maintain the action.

When one considers the above judgment it seems that there could be a landlord who is a tenant, but need not be the owner of the premises. But the provisions of Section 22(2) (bb)

is the law applicable to a landlord who is a owner of one house. The wording in Section 22(1) (bb) and the wording in Section 22(2) (bb) are different. Hence I agree with the submissions of the learned Counsel for the Plaintiff-Respondent-Respondent that the above case is not applicable to the situation in this case.

In *Jiffrey vs. Esufali*⁽²⁾ *G. P. S. de Silva, C. J.* held that:-

1. "Section 22(2) (bb) (ii) of the Rent Act is intended to benefit a category of persons who may for convenience be described as "single house owners". This, however, does not mean that ownership of one house or a part of house is a condition precedent to the institution of an action in ejectment."
2. "Section 22(7) is intended to protect a tenant from eviction by a person who had purchased the premises over the head of the tenant and thus becoming the new landlord.

At this stage we wish to advert to certain provisions in our law which would assist in adopting the above interpretation. According to Section 5(1) of the Married Women's Property Ordinance, "a married woman shall, in accordance with the provisions of this Ordinance, be capable of acquiring, holding, and disposing by will or otherwise of any movable or immovable property as her separate property, in the same manner as if she were a feme-sole, without the intervention of any trustee".

According to sub section (2) of the same Section "a married woman shall be capable of entering into, and rendering herself liable in respect of and to the extent of her separate property on, any contract, and of suing and being sued, either in contract or in tort, or otherwise, in all respects as if she were a feme-sole, and her husband need not be joined with her as Plaintiff or Defendant, or be made a party to any action or other legal proceedings brought by or taken against her; nor shall he be liable, merely on the ground that he is her husband, in

respect of any tort committed by her and any damages or costs recovered by her in any such action or proceeding shall be her separate property; and any damages or costs recovered against her in any such action or proceeding shall be payable out of her separate property, and not otherwise.

According to sub section (3) every contract hereafter entered into by a married woman otherwise than as agent -

- (a) shall be deemed to be a contract entered into by her with respect to and to bind her separate property whether she is or is not in fact possessed of or entitled to any separate property at the time when she enters into such contract;
- (b) shall bind all separate property which she may at that time or thereafter be possessed of or entitled to: and
- (c) shall also be enforceable by process of law against all property which she may thereafter while discovered be possessed of or entitled to.

According to section (7) of the same Ordinance every woman who marries after the commencement of this Ordinance shall be entitled to have and to hold as her separate property, and to dispose of in manner aforesaid, all movable and immovable property which shall belong to her at the time of her marriage or shall be acquired by or devolve upon her after marriage, including any wages, earnings, money, and property gained or acquired by her in any employment, trade, or occupation in which she is engaged, or which she carries on separately from her husband, or by the exercise of any literary, artistic or scientific skill. Similar provisions are enacted in Section 10 of the same Ordinance as regards property acquired after the commencement of the Ordinance by a woman married before the commencement of the Ordinance and such property shall be held by her as if unmarried. According to Section 18 she is entitled to the same remedies both civil and

criminal for protection and security of her separate property as if such property belonged to her as a feme-sole.

Similar provisions are enacted in the Matrimonial Rights and Inheritance Ordinance.

When one considers the above provisions of law it is clear that the concept of Roman Dutch Law of Community of Property is not in force in Sri Lanka. In such a situation one cannot say that a wife who is a single house owner cannot maintain an action for ejection of a tenant merely because her husband is also a owner of another house.

In the instant case the Plaintiff has a house in Dalugama and she wants to recover that house for the purpose of the education of her children. She has no other houses except the house which is the subject matter of this case. Even though admittedly her husband has a house in Galle it will not affect her rights as a single house owner. If one is to accept that a wife is not entitled to maintain an action as a single house owner on the mere fact that the husband also is a owner of another house, there may arise situations where the husband deserts his wife or due to some other family problem she cannot live with the husband she may be left without a house to reside. A marriage is a contractual agreement which governs their relationship. Such a contract will not-deprive their individual rights to the ownership of property. If one is to accept the argument of the learned Counsel for the Defendant-Petitioner, it would cause grave and irremediable injustice to a one house owner wife.

In this instance, therefore on the admitted facts the Plaintiff-Respondent is the landlord and a person permitted by Section 22(2) (bb) of the Rent Act No. 7 of 1972 as amended by Act No. 55 of 1980 to be entitled to maintain an action subject of course to the bar contained therein, namely, that such landlord should own no house or own not more than one residential premises. The adjudication on the facts have not

been sought to be assailed in appeal. The ownership of the premises in suit was not the determinable question of being a bar to the maintainability of the action. The question in issue was whether the landlord was an owner of not more than one residential premises which simply meant whether the landlord owned any house or more than one house.

This Court therefore sees no reason to interfere with the judgment of the learned District Judge dated 01.09.1995 and the order dated 02.12.1997. The application for revision and restitutio in intergrum is dismissed with costs fixed at Rs. 5,000/- payable by the Defendant-Petitioner to the Plaintiff-Respondent.

JAYASINGHE, J. - I agree.

Application dismissed.